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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 IZAZ KHAN,

11 Plaintiff,

12 v.

13 TOM GILES, *et al*,

14 Defendants.
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Case No. C08-5698RBL-KLS

ORDER DIRECTING CLERK
TO
DISMISS PETITION WITHOUT
PREJUDICE


18 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C.
19 § 636(b)(1)(B). This matter comes before the Court upon plaintiff's written request sent to the
20 Clerk (Dkt. #3) that the civil rights complaint filed in this matter on November 20, 2008 (Dkt. #1)
21 be disregarded. The Court shall treat plaintiff's written request as a motion to voluntarily dismiss
22 that complaint. After reviewing plaintiff's motion and the record, the Court hereby does find and
23 ORDERS as follows:

24 Under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41, plaintiff has the right to
25 voluntarily dismiss his case without order of the Court when no answer or motion for summary
26 judgment has been filed by an adverse party. Fed. R. Civ. P. 41(a)(1) specifically provides that
27 dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary
28 judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992). Procedurally in this case,

1 defendants have not yet been served with the complaint. Accordingly, pursuant to Fed. R. Civ. P.
2 41(a)(1), plaintiff's motion to dismiss (Dkt. #1) hereby is GRANTED.

3 The Clerk is directed to dismiss this matter without prejudice and to send a copy of this Order
4 to plaintiff. The Clerk also is directed send plaintiff copies of both the motion to proceed *in forma*
5 *pauperis* and the civil rights complaint filed in this matter per his request. (Dkt. #3).

6 DATED this 22nd day of December, 2008.

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10 Karen L. Strombom
11 United States Magistrate Judge
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